

In the Matter of Merchant Mariner's Document No. Z-769321-D2 and
all other Seaman Documents

Issued to: LEON P. LAWSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1327

LEON P. LAWSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 15 December 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an ordinary seaman on board the United States SS ESPARTA under authority of the document above described, on 7 October 1961, Appellant assaulted and battered messman Gloria.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of several witnesses including that of messman Gloria.

Appellant and two witnesses testified in defense. Appellant stated that he did not push messman Gloria when he was shaking his finger in Appellant's face; Appellant acted in self-defense when he knocked Gloria to the deck with two or three blows after he raised a chair approximately two and one-half feet off the deck.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of five months outright plus five months on twelve months' probation. This includes a prior four months' suspension which has been placed on probation.

FINDINGS OF FACT

On 7 October 1961, Appellant was serving as an ordinary seaman on board the United States SS ESPARTA and acting under authority of

his document while the ship was in the port of Bolivar, Ecuador.

About 1700 on this date in the crew's messroom, messman Gloria ignored Appellant's order for soup. When Appellant repeated the order, Gloria went to Appellant's table, shook his finger in Appellant's face and told him to take it easy. Since this continued after Appellant told Gloria to stop it, Appellant stood up, pushed Gloria and he fell to the deck. Gloria held onto a chair while he was getting up. When on his feet, Gloria started to pick up the chair but had raised it only a few inches from the deck before he was hit several times in the face by Appellant and knocked to the deck. Another messman stopped Appellant from hitting Gloria. Messman Gloria, who is a much older man than Appellant, struck no blows. Gloria's eyeglasses were knocked off and his face was bleeding.

Appellant's prior record consists of two months' outright suspension plus four months' probation, on 27 February 1961, for wrongfully striking a crew member with a dangerous object.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision is contrary to the evidence and the law of self-defense. There is no proof that Appellant could have retreated or otherwise prevented the threatened assault with the chair. Insufficient weight is given to the prior hostile attitude of Gloria. The order is excessive. It is prayed that the decision be reversed or the case remanded for rehearing.

APPEARANCE: Benjamin B. Sterling, Esquire
of New York City, of
Counsel

OPINION

The contentions raised on appeal are without merit. There are discrepancies in the testimony as to certain details such as whether Gloria picked up the chair or was simply leaning on it for support when he was hit by Appellant. The Examiner accepted as fact the testimony that Gloria raised the chair a matter of inches off the deck. The evidence as a whole indicates that if Appellant had any reason to fear that Gloria intended to hit Appellant with the chair, Appellant could easily have disarmed Gloria, a frail old man, without striking blows. Not even Appellant testified that Gloria advanced toward Appellant with the chair; and one witness testified that Gloria raised the chair off the deck but was moving backward, away from Appellant, with it.

There is no doubt that Appellant used force far in excess of what was necessary to repel any intended attack by Gloria. I agree with the Examiner that Appellant's conduct was due to irritation and anger rather than fear of being hit with the chair held by the messman.

The order is not considered to be excessive. It adds only one month outright suspension to the prior four months' suspension which was ordered to be effective by revocation of the prior probation.

It is my opinion that there is no reasonable grounds for dismissal or remanding of this case.

ORDER

The order of the Examiner dated New York, New York, on 15 December 1961, is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 7th day of August, 1962.